

**FILED**  
**DISTRICT COURT OF GUAM**

SEP 03 2008 RD

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**DISTRICT COURT OF GUAM**

**TERRITORY OF GUAM**

TCW SPECIAL CREDITS, et al.,

Civil Case No. 96-00055

Plaintiffs,

vs.

F/V CHLOE Z, et al.,

Defendants.

ROBERT MATOS,

**REQUEST FOR RECONSIDERATION**

Plaintiff-in-Intervention,

vs.

M/V CHLOE Z, et al.,

Defendants.

The vessel CHLOE Z requests that the Magistrate rule on one issue which was presented in the motion papers, which was not mentioned in the Report and Recommendation of August 26, 2008. CHLOE Z does not re-argue any of the issues resolved in the recent Report and

Recommendation, but asks only that this one issue be considered and a recommendation issued thereon.

In the Matos matter there is a recommendation that prejudgment interest be awarded with the date of judgment as February 19, 1999. In his calculation, however, the Magistrate recommended prejudgment interest on the entire judgment amount, including those amounts for damages which accrued after February 19, 1999. In his decision of February 19, 1999, Judge Unpingco explicitly separated those components of the judgment which predated the judgment date and those components of the judgment which postdated the judgment date. Specifically, Judge Unpingco awarded \$210,058.73 for past wage loss and \$50,000.00 for past pain and suffering. See judgment of February 19, 1999 at pages 9-10. Both of these numbers were then reduced by 33% to account for plaintiff's comparative negligence. The remainder of the judgment amount was for future wage loss and future pain and suffering.

It is black letter law that prejudgment interest is not allowable with respect to losses that will accrue subsequent to judgment. As stated by the Ninth Circuit "Nor is prejudgment interest allowable with respect to losses that will accrue subsequent to judgment." *Columbia Brickworks v. Royal Insurance Company*, 768 F.2d 1066, 1068 (9th Cir. 1985) citing *Wyatt v. Penrod Drilling Company*, 735 F.2d 951, 955-56 nn. 3, 4 (5th Cir. 1984). See also *Pickle v. International Oil Field Divers, Inc.*, 791 F.2d 1237, 1241 (5th Cir. 1986), *Borges v. Our Lady of the Sea Corp.*, 935 F.2d 436, 444-45 (2nd Cir. 1994).

The appropriate sum upon which to calculate prejudgment interest, therefore, is \$174,238.86. (\$210,058.73 in past wage loss, plus \$50,000 for past pain and suffering reduced by 33%). Because this prejudgment interest amount also impacts the post judgment interest recommendation, both prejudgment interest and post judgment interest must be recalculated.

Utilizing precisely the same interest rate, time periods, formula, and methodology as this Magistrate, the prejudgment interest calculations should be as follows:

<u>Time Period</u>	<u>Interest</u>	<u>Total Sum</u>
08-08-92 to 08-07-93	\$8,781.65	\$183,020.65
08-08-93 to 08-07-94	\$9,224.24	\$192,244.89
08-08-94 to 08-07-95	\$9,689.14	\$201,934.03
08-08-95 to 08-07-96	\$10,177.48	\$212,111.50
08-08-96 to 08-07-97	\$10,690.42	\$222,801.91
08-08-97 to 08-07-98	\$11,229.22	\$234,031.12
08-08-98 to 02-18-99	\$6,301.53	\$240,332.64

This yields a total prejudgment interest of \$66,093.68. When added to the judgment principal amount of \$621,514.50, this yields a total judgment value as of the date of judgment of \$687,608.19.

Utilizing precisely the same time periods, interest rate and methodology that Magistrate Manibusan utilized for post-judgment interest, yields the following results.

<u>Time Period</u>	<u>Interest</u>	<u>Total Sum</u>
02-19-99 to 02-18-00	\$31,519.96	\$719,128.13
02-19-00 to 02-18-01	\$32,964.83	\$752,092.96
02-19-01 to 02-18-02	\$34,475.94	\$786,568.90
02-19-02 to 02-18-03	\$36,056.32	\$822,625.21
02-19-03 to 02-18-04	\$37,709.14	\$860,334.34
02-19-04 to 02-18-05	\$39,437.73	\$899,772.06
02-19-05 to 02-18-06	\$41,245.55	\$941,017.61
02-19-06 to 02-18-07	\$43,136.25	\$984,153.85
02-19-07 to 02-18-08	\$45,113.61	\$1,029,267.40
02-19-08 to 08-26-08	\$24,431.03	\$1,053,698.43

Interest would continue to accrue at the rate of \$132.33 per day.

This issue was raised in CHLOE Z's Memorandum of Points and Authorities in Opposition to Claimant's Motion to Establish Prejudgment Interest filed on November 1, 2006 at pages 10 and 11.

Accordingly, CHLOE Z requests the Magistrate issue a revised report and recommendation in the Matos matter taking into account this issue.

Respectfully Submitted this 3<sup>rd</sup> day of September, 2008.

**ARRIOLA, COWAN & ARRIOLA**



**ANITA P. ARRIOLA, ATTORNEY FOR CHLOE Z**

## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2008, a true and correct copy of the foregoing was sent via U.S. Mail to:

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